

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of
Sherwood Trucking Corp. :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of
Corporation Franchise Tax :
under Article 9 of the Tax Law
for the Years 1972 & 1973. :

State of New York
County of Albany

Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 6th day of June, 1980, he served the within notice of Decision by certified mail upon Sherwood Trucking Corp., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Sherwood Trucking Corp.
10 Malverne La.
Stoney Brook, NY 11790

and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this
6th day of June, 1980.

Joanne Krapp

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Sherwood Trucking Corp. :
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for Redetermination of a Deficiency or a Revision :
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Corporation Franchise Tax :
under Article 9 of the Tax Law :
for the Years 1972 & 1973. :

State of New York
County of Albany

Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 6th day of June, 1980, he served the within notice of Decision by certified mail upon George M. Shore the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Mr. George M. Shore
226 E. 54th St.
New York, NY 10022

and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the representative of the petitioner herein and that the address set forth on said wrapper is the last known address of the representative of the petitioner.

Sworn to before me this
6th day of June, 1980.

Joanne Krapp

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION
ALBANY, NEW YORK 12227

June 6, 1980

Sherwood Trucking Corp.
10 Malverne La.
Stoney Brook, NY 11790

Gentlemen:

Please take notice of the Decision of the State Tax Commission enclosed herewith.

You have now exhausted your right of review at the administrative level. Pursuant to section(s) 1090 of the Tax Law, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Laws and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within 4 months from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to:

NYS Dept. Taxation and Finance
Deputy Commissioner and Counsel
Albany, New York 12227
Phone # (518) 457-6240

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
George M. Shore
226 E. 54th St.
New York, NY 10022
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
SHERWOOD TRUCKING CORP.	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Corporation Taxes under Article 9	:	
of the Tax Law for the Years 1972 and 1973.	:	

Petitioner, Sherwood Trucking Corp., 10 Malverne Lane, Stoney Brook, New York 11790, filed a petition for redetermination of a deficiency or for refund of corporation taxes under Article 9 of the Tax Law for the years 1972 and 1973 (File No. 13978).

A formal hearing was held before Archibald F. Robertson, Jr., Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on June 30, 1977 at 4:15 P.M. Petitioner appeared by George M. Shore, CPA. The Audit Division appeared by Peter Crotty, Esq. (Andrew Haber, Esq., of counsel).

ISSUE

Whether petitioner may treat certain monies paid as stockholder dividends in 1972 and 1973 as wages or salary, thereby reducing dividends paid for purposes of section 183.3 of the Tax Law.

FINDINGS OF FACT

1. During 1972 and 1973, petitioner, Sherwood Trucking Corp., was a small, family-owned and operated trucking business headquartered at 10 Malverne Lane, Stoney Brook, New York.

2. Petitioner had three employees during 1972 and 1973. Its two principal shareholders, Mr. Kopperl and Mr. Siano, acted as officers and truckdrivers throughout that period, while Mr. Siano's son was employed as a truckdriver.

3. In 1972 and 1973, Mr. Kopperl and Mr. Siano received substantial dividend payments from petitioner. Petitioner adopted this dividend compensation method in an effort to reduce the burden of wage-related workmen's compensation costs.

4. Petitioner's two principal shareholders, Mr. Kopperl and Mr. Siano, received less wages under the dividend compensation method used in 1972 and 1973 than they had in the years immediately preceding that period.

5. Petitioner benefited indirectly from its dividend plan in 1972 and 1973, in that it paid less wages during that period and consequently had a lower workmen's compensation cost.

6. The corporation had issued 100 shares of no par value stock. The amount paid in on each share was \$16.05, resulting in a total of \$1,605.00. Dividends paid relating to the year 1971 were \$23,995.00; dividends paid relating to 1972 were \$32,077.00. The Audit Division applied the 1971 dividends to the period which began January 1, 1972 and the 1972 dividends to the period beginning January 1, 1973, and found that in each case the dividend rate was six percent or greater (i.e. 1,495.02 percent for the period beginning January 1, 1972 and 1,998.57 percent for the period beginning January 1, 1973). The Audit Division then applied the tax at the "mill rate" set forth in section 183.3 of the Tax Law, resulting in deficiencies of \$824.81 for 1972 and \$1,127.88 for 1973. On October 15, 1973, the Audit Division issued notices of deficiency for said amounts.

CONCLUSIONS OF LAW

A. That the amounts which petitioner elected to treat as dividends constituted dividends within the meaning of section 183.3 of the Tax Law.

B. That the Audit Division's calculation of tax based on the "mill rate" set forth in section 183.3 of the Tax Law was correct.

C. That the petition of Sherwood Trucking Corp. is denied and the notices of deficiency are sustained.

DATED: Albany, New York

JUN 6 1980

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER